Supreme Court, U. S.
FILED
NOV 10 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-8

MEHENDRA R. MEHTA,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY BRIEF FOR PETITIONER

FREDERICK F. COHN
35 E. Wacker Drive
Chicago, Illinois 60601
Attorney for Petitioner

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

TABLE OF CONTENTS

PAGE

STATEMENT 1
As to Dave and Vora 1
As to Patel 3

ARGUMENT:

1.
18 U.S.C. 1001 is unconstitutional as applied to acts of a lawyer as an advocate 5

2.
The government's tactics seek to circumvent basic Sixth Amendment and due process rights 6

3.
The government's position is founded upon a totally inaccurate view of the Department of Immigration's discretion in approving an alien for permanent residential status 8

4.
Defendant was denied assistance of counsel 10

5.
The findings referred to by the government are insufficient to satisfy the requirements of specific findings of facts and conclusions of law 11

6.
This Court has jurisdiction to consider the prejudice to defendant caused by the trial judge's encounter with a government rebuttal witness out of the courtroom 12

CONCLUSION 15

AUTHORITIES CITED

Cases

Anders v. California, 386 U.S. 738 11
Bronston v. United States, 409 U.S. 359 (1973) 11
Brady v. Maryland, 373 U.S. 83 ..... 8, 10
DeMarco v. United States, 415 U.S. 449 (1974) 8, 9, 10
Dennis v. United States, 384 U.S. 855 8
Glasser v. United States, 315 U.S. 60 (1942) 11
Morgan v. United States, 309 F.2d 234 (D.C. Cir. 1961) 5
Napue v. Illinois, 360 U.S. 264 (1959) 10
Remmer v. United States, 347 U.S. 929, 98 L.Ed. 654 .. 14
Silber v. United States, 370 U.S. 717, 8 L.Ed.2d 798 12
United States v. Agurs, 427 U.S. 97 (1977) 10
United States v. Atkinson, 297 U.S. 157 (1936) 12
United States v. Costello, 350 U.S. 359 ..... 6, 7
United States v. Cruz, 478 F.2d 408 ..... 6, 7
United States v. Guerts, 53 F.R.D. 26 (E.D. Wis. 1971) .. 10
United States v. Harrison, 451 F.2d 1013 (2 Cir. 1971) .. 10
United States v. Livingston, 459 F.2d 797 (3 Cir. 1972) 11
United States v. Lozano, 511 F.2d 1 (7 Cir. 1975) 11
United States v. Sicilia, 457 F.2d 787 (7 Cir. 1972) 11
United States v. Vaughan, 443 F.2d 93 (2 Cir. 1971) .. 12, 14
United States v. Walls, 443 F.2d 1220 (6 Cir. 1971) 12
Wardius v. Oregon, 412 U.S. 470 8

Constitutional Provisions and Statutes

Sixth Amendment, United States Constitution 6, 7, 11
18 U.S.C. 1001 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-8

MEHENDRA R. MEHTA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY BRIEF FOR PETITIONER

STATEMENT

As the government's Brief in opposition misstates the facts, we are constrained to reply as follows:

As to Dave and Vora

The government strongly relies upon the testimony of Vora and Dave. Vora admitted on cross-examination that

he lies often and "when it helps me". (Tr. 61-71, 945) Dave also was thoroughly impeached. (Tr. 243, 810-18, 822-27)

Similarly, the government asserts that the $75,000 figure was a total fabrication instead of a projection, and that the job offer was fictitious. This is not true.

Mr. Fried testified that he could pay each alien that rate because their presence would enable him to handle additional business which he could not otherwise handle. (Tr. 268, 280-81, 288-91, 293) Fried testified that it was possible that with good help he could gross $75,000. (Tr. 302) If Fried could obtain sufficient business for either alien to work 40 hours a week at the average charge of $28 per hour (See Appendix A) for instrument repair, he could produce billing of $58,240 per additional employee over the course of a year. Their work would also support a substantial gross income in sales of parts for such repairs. The estimate of $75,000, therefore, is by no means untrue. The figure was an estimate (Tr. 662-64) by defendant based on conversations with Fried. (Tr. 662-64)

The form MA-750B does not specify whether what is desired is actual income or projected income. (Tr. 804) Nor do the guidelines so indicate. No entry for annual sales or income is required if the employer is an educational institution, hospital, church, non-profit organization, private household, or other non-business establishment. Income does not appear to be of great importance. The form is sufficiently ambiguous that "one could put in a projected figure in logical answer to that question."*

---

* Testimony of Ralph Schelly, attorney, specializing in immigration work, and Second Vice-President of Chicago Association of Immigration and Nationality Lawyers. (Tr. 802-04)

Although at trial Fried testified that he had never seen Dave or Vora until after signing the certificates, he gave prior inconsistent statements to federal agents. (See D1 and D2, 3500 statements tendered to defendant prior to trial, Apps. B & B1)

As to Patel

None of the documents states that the figure is what Mr. Patel is *presently* being paid; instead, all are offers of what the company *would pay* when he *would* become absorbed in a permanent position, which could *only* occur upon his becoming a permanent resident. (Tr. 369, 391, 392) (See Defendant's Exhibit 61, App. C) The process of applying for permanent status could take more than one year. (Tr. 785). Thus, the future higher wages, as stated in the allegedly false statements, would represent a legitimate raise, considering the probable passage of time, and keeping in mind standard raises based on rising inflation and cost-of-living increases.

Officer Vraa of the Immigration Service admitted that a person must be receiving the offered amount at the time he becomes a permanent resident. (Tr. 498) Since it takes more than a year to process an application, (Tr. 785), it can be expected the present salary will differ from a future job offer. Evidence demonstrates that the job offer was an offer that the company would pay that salary to Mr. Patel at some time in the future. Mr. Zeleniak testified that it *was* a true job offer:

"Q. Okay, now, that was in fact a true offer.
A. Yes sir, it was. (Tr. 375)
. . .
Q. And this, too, was a lie.

A. What was a lie sir?
Q. The wage offer of 6.30.
A. No, sir." (Tr. 379)

The trial court himself noted that Zeleniak testified, ". . . that the 6.30 wage offer was not a lie." (Tr. 983-84)

The assertion of excessive fees is inappropriate. The fee quoted by defendant was not merely to proceed with the normal application processing, for which others charged $1,500, (Tr. 797), but included, if necessary, multiple filings and any and all appeals to the Immigration Board of Appeals. (Tr. 550-55)

ARGUMENT

1.

18 U.S.C. 1001 is unconstitutional as applied to acts of lawyer as an advocate.

The government asserts that defendant was not proceeding as an advocate for a client in an adversarial setting, but merely before an administrative agency; and hence, goes the argument, under the authority of *Morgan* v. *United States,* 309 F.2d 234, 237 (D.C. Cir. 1961), 18 U.S.C. 1001 is applicable.

Morgan v. *United States* is totally distinguishable. There, defendant was *not a lawyer*. He was charged with *impersonating* a lawyer. 18 U.S.C. 1001 was applied to him in regard to his "concealing his name, identity and non-admission to the bar." *Id.* at 235. This was the housekeeping function considered by the court.

That is totally different from *this* situation, where assertions are made to the Department of Labor and the Immigration Service, which *do* investigate, question applicants and hold hearings as to the propriety of granting resident status.

It is difficult to conceive how the government can assert defendant was *not* proceeding as an advocate when the counts of the indictment for which defendant was convicted read "at all times herein relevant the defendant Mehendra Mehta was acting as an attorney for". See Counts 1, 2, 3, 4, 7, 9 and 10, Appendix C of the Petition for Certiorari. The government's proof demonstrated that all acts of defendant were as an attorney for his alien clients.

He, in using vague and complicated forms,[1] acted as an advocate for his clients to the best of his abilities without any criminal intent.

Defendant was here proceeding as an advocate, and hence 18 U.S.C. 1001 is unconstitutional as applied.

2.

The government's tactics seek to circumvent basic Sixth Amendment and due process rights.

The evidence in this record demonstrates a purposeful and deceitful attempt by the government to prevent defendant from having witnesses' prior statements. (See Petition, pp. 10-11) The government seeks to avoid this by referring to *United States* v. *Costello*, 350 U.S. 359, and *United States* v. *Cruz*, 478 F.2d 408, and by asserting that defendant has no right to preservation of statements of witnesses made to government agents. *Costello* and *Cruz* are distinguishable. *Costello* may approve hearsay testimony before the grand jury for indictment purposes, but it certainly does not abridge the Sixth Amendment right of confrontation.

In *Costello* and *Cruz*, the agents who testified before the grand jury *were* called as government witnesses at trial. Their grand jury testimony was available to defendant.

---

[1] The form MA7-50B, approved by the Department of Labor, Appendix D, is incomplete and vague in its nature and without proper guidelines, and is capable of various interpretations. There are no guidelines so far as Items 8 and 17 are concerned. In case of non-profit organizations, no income is required to be mentioned. The form and directions are vague as to whether the income should be actual income or projected income based upon business generated by those employees.

Here *only* Agent White testified at the grand jury. To avoid impeachment and to prevent defendant from having the use and benefit of his prior statement, (incorporating the other witness' statements), the government did not call him as a trial witness.

Nor in *Costello* and *Cruz* was there the practice, as here, of not taking notes when interviewing witnesses, recording conversations from memory only 4 to 6 months later, or destroying original notes from which discoverable material is prepared. The accumulated acts of the government in preventing defendant from obtaining meaningful statements of witnesses violates due process as well as the confrontation clause of the Sixth Amendment.

Nor is there validity to the government's assertions that certiorari should not be granted because two of many federal agencies have altered otherwise unconstitutional practices. (G. Br. pp. 6-7, fn. 3)

Here, Agent White testified before the Grand Jury in essence from his memory. Notes of witness' statements were recorded 4 to 6 months after the conversation. His testimony before the grand jury was a recording of their statements.

There is no indication that the Court of Appeals read the grand jury testimony of Agent White to determine whether it contains exculpatory evidence Nor did the trial court read it with an open mind. He first refused to order its transcription or production, or to have it made part of the record (Tr. H. 356), and only thereafter indicated he had read it. (R. 9) The distinction between "3500" material and material producible under *Brady* due to possible exculpatory matter is a real one indeed.

Under the principles of *Brady* v. *Maryland,* 373 U.S. 83, and *Wardius* v. *Oregon,* 412 U.S. 470, White's grand jury testimony had to be presented to defendant, so that he could determine its usefulness in trial preparation and cross-examination. *Dennis* v. *United States,* 384 U.S. 855; *DeMarco* v. *United States,* 415 U.S. 449.

Certiorari must therefore be granted, to decide whether the government violated due process by purposefully having prevented defendant from obtaining prior statements, thereby preventing effective confrontation of witnesses.

3.

The government's position is founded upon a totally inaccurate view of the Department of Immigration's discretion in approving an alien for permanent residential status.

Respondent misstates petitioner's position, misstates the record, and misleads this Court as to the nature of the procedures of the Immigration and Naturalization Department concerning granting permanent resident status.

Petitioner's complaint is not (as asserted by respondent, pp. 7-8) that Dave and Vora were not deported. Petitioner's complaint is that prior to trial, petitioner asked if there were any promises or inducements or agreements of leniency (R. 12) and was told *no* (R. 15), when in truth the government had decided not to deport. (R. 62, p. 3)

Nor can respondent rely upon the Court of Appeals' erroneous assertion that the decision not to deport Dave and Vora was merely an administrative decision of the Department of Labor, and not an act of leniency in exchange for testimony. The panel's opinion inaccurately assumes that once the Department of Labor has issued a labor

certificate, permanent resident status follows automatically. The issue of Labor Certification is an administrative ruling decided by the U.S. Department of Labor, not by the Immigration Service. The determination involves such factors as job availability for American citizens, wages, minimum vocational requirements, including what is contained in the forms by the applicants. The Immigration Service has discretionary power to deny permanent resident status, whether or not a Labor Certification has issued. The Immigration Service could—and normally would—deny the grant of such permanent status to applicants like Dave and Vora, who have violated immigration laws. (Tr. 60-70, 816-25)[2, 3]

There was no material before the Court of Appeals to dispute what is commonly known: the Immigration Service, not the Department of Labor, makes the decision on deportation. Absent proper material in the Court of Appeals, this matter must be remanded to the trial court for an evidentiary hearing. *DeMarco* v. *United States,* 415 U.S. 449.

The decision of the Immigration and Naturalization Department—the de facto prosecutorial agency—not to deport was an awarding of "prosecutorial leniency."

The prosecution caused the court to believe that the threat of deportation was hanging over each witness' head; not that a "deal" had been made, that the witness would not be deported. (Tr. 977) The situation is comparable to a witness testifying that no promise concerning prosecution had

---

[2] Here, both Dave and Vora had violated provisions of the Immigration Service law by accepting employment without permission, thereby remaining in illegal status. (Tr. 60-70, 816-825)

[3] See Appendix E, Decision to Deport an Alien, and to violations of the law similar to those of Vora and Dave.

been made, where the witness knew that the government had in fact decided to drop criminal charges or to recommend probation. This deception violates due process. *DeMarco* v. *United States*, 415 U.S. 449 (1974); *Napue* v. *Illinois*, 360 U.S. 264 (1959). See *United States* v. *Guerts*, 53 F.R.D. 26 (E.D. Wis. 1971) and *United States* v. *Agurs*, 427 U.S. 97 (1977).

Certiorari must therefore be granted.

4.

Defendant was denied assistance of counsel.

Respondent's reliance on defense counsel's self-serving statement[4] to the court cannot alter the situation that petitioner was forced to proceed with lengthy post-trial motions without counsel. Petitioner, although a lawyer, was trained in India. He had a right to effective counsel. *United States* v. *Harrison*, 451 F.2d 1013 (2 Cir. 1971). He, the defendant, both under pressure and not trained or experienced in federal criminal matters, could not render to himself effective counsel as required by the Sixth Amendment to the United States Constitution. And he had the right to have his lawyer be an advocate for him. *Anders* v. *California*, 386 U.S. 738.

Here, where petitioner had no counsel in a post-trial motion in order to demonstrate the failure to produce all relevant material and the errors at trial, neither the Court of Appeals nor this Court can assess the amount of prejudice to petitioner in not having counsel. Pursuant to *Glasser* v. *United States*, 315 U.S. 60 (1942), certiorari must be granted and this cause reversed for an evidentiary hearing.

5.

The findings referred to by the government are insufficient to satisfy the requirements of specific findings of facts and conclusions of law.

The findings relied upon by the government do not satisfy Rule 23(c) for they fail to set out sufficiently specific facts and conclusions of law necessary for appropriate appellate review. Here involved were alleged false statements on very vague forms. For consideration was the problem whether the alleged false responses were not literally untrue, see *Bronston* v. *United States*, 409 U.S. 359 (1973); *United States* v. *Lozano*, 511 F.2d 1 (7 Cir. 1975), and whether defendant was proceeding as an advocate.

"Here, [d]etailed legal conclusions are, of course appropriate . . . [because] the facts . . . suggest several legal principles which the trial judge might have invoked." *United States* v. *Livingston*, 459 F.2d 797 (3 Cir. 1972). See *United States* v. *Sicilia*, 457 F.2d 787 (2 Cir. 1972).

---

4 Trial counsel's response, relied upon by the government, (Gov. B. p. 9), merely demonstrates that he did not believe he was incompetent for not requesting further materials in pre-trial motions. Other materials were in existence and not given to defendant at the post-trial motion because the government was able to assert waiver by counsel. (Tr. H. 303, Tr. 340) The court also stated that other matters might have been withheld, but held that no proper proof was made by defendant, appearing pro se. (Tr. H. 352) The court would not permit defendant to proceed to determine whether there had been material withheld in violation of the principles of *Brady* v. *Maryland*, 373 U.S. 83 (1963). (Tr. H. 6)

The court did not permit defendant to obtain various applications of Vora and Dave filed with the Immigration Service. These contained statements appropriate for impeachment purposes. (Tr. H. 231-33. See App. F)

6.

This Court has jurisdiction to consider the prejudice to defendant caused by the trial judge's encounter with a government rebuttal witness out of the courtroom.

This Court has the power to notice fundamental error appearing on the record. *Silber* v. *United States,* 370 U.S. 717, 8 L.Ed.2d 798; *United States* v. *Atkinson,* 297 U.S. 157 (1936); and *United States* v. *Vaughan,* 443 F.2d 92 (2 Cir. 1971).

In *Vaughan,* in analyzing the applicable plain error rule, the court stated:

> "It is not a miscarriage of justice to convict a guilty man but if he is convicted in a way inconsistent with the fairness and integrity of judicial proceedings, then the courts should invoke the plain error rule in order to protect their own public reputation."

There, the plain error rule was applied to a situation where the trial court, sitting without a jury, was prejudiced by evidence outside the record. See also *United States* v. *Walls,* 443 F.2d 1220 (6 Cir. 1971).

So too, it would appear, at bar.

Here, the judge was present on an elevator when an uncalled government witness, Rothman, who was not called because he failed to appear on time, commenced a conversation. The court saw defendant attempt to stop that conversation by kicking the witness. The witness, when realizing the judge was present, then pursued the judge out of the elevator.

The prejudice to defendant from this incident becomes clear by considering the importance of this witness both to the prosecution and the defense. A crucial theory for the

prosecutor's case was that defendant himself created a figure of $75,000 as the income for George Fried, and that such figure was not a projection of what the income of the business would be upon hiring two employees. This theory was countered by defense testimony that the $75,000 figure was a projection based on conversations with Mr. Fried. To support its theory, the government asserted that in two other applications, in regard to two other businesses, the defendant had also fabricated a $75,000 figure. As to one such other business, the court upon cross-examination of government witness Rao found that the $75,000 was in fact a projection. The court held this was favorable to defendant. (Tr. 986)

The court in order to determine whether the $75,000 figure with regard to George Fried was an honest projection or a fabrication, showed great interest in hearing the testimony of Mr. Rothman, who filed the form as to the other business. (Tr. 676) Although under subpoena, Mr. Rothman did not appear to testify, and the government finally rested in rebuttal without calling him. Immediately thereafter, there were the final arguments. The court recessed for the evening so that he could deliberate prior to any judgment. The court entered the elevator, which contained defendant, his lawyer and Mr. Rothman and others. And then the incident, as described by the judge, occurred. Appendix D, original Petition.

Here, where there had been discussion in open court that possibly Mr. Rothman would desire immunity prior to testifying—implying that Rothman may be guilty of an offense—which would imply defendant's guilt, this incident was so highly prejudicial as to affect the judge's deliberation.

Defendant was denied his right of confrontation as to what the witness may have said to the judge, as well as his right to question the judge's expression in court as to the effect this encounter may have had on him. How could defendant dispute the judge's statement that even though he was present in the elevator, he did not hear the witness' statement! Testimony by a witness in a similar circumstance would subject the witness to extensive cross-examination. Under similar circumstances, even a juror could be examined by defense counsel. *Remmer* v. *United States,* 347 U.S. 929, 98 L.Ed. 654. Limitations on such examination of a juror would be reversible error. *Ibid.* But here, where defendant was on trial before the court and the court had to decide both his guilt and any sentence, it was impossible to expect defendant to cross-examine the court as to (a) what he heard and (b) what effect the incident may have had on his determination of defendant's guilt.[5] See *United States* v. *Vaughan, supra.*

The situation therefore denied defendant his right to trial by an impartial factfinder; here, his right to an impartial trier of fact not prejudiced by private encounters with witnesses was denied.

This Court must grant certiorari to consider this vital issue—whether, where a defendant would have an opportunity to examine even a juror as to prejudice due to an encounter with a witness outside of court, and no opportunity exists when the matter is tried before the court, must a mistrial be granted in order to avoid the defendant's being convicted by a judge prejudiced by such encounter.

---

5 The court never asked defendant or his counsel if they desired to question him.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that his Petition for a Writ of Certiorari be granted.

Respectfully submitted,

FREDERICK F. COHN
35 E. Wacker Drive
Chicago, Illinois 60601
Attorney for Petitioner

APPENDIX A

LETTER DATED MAY 26, 1976•

5330 KEYSTONE COURT
ROLLING MEADOWS, ILLINOIS 60008

TEKTRONIX

PHONE: 259-7580
D.D. CODE: 312

May 26, 1976

Two-Way Radio
5041 S. Dorchester
Chicago, Ill. 60615

Attn: Benjamin Fields

Gentlemen:

This is to advise you that the cost of repair for instruments being serviced is based on the cost of parts plus labor at the rate of $28.00/hour.

Sincerely,

Pat Youdelis

Pat Youdelis

068-7844-00 D

• Appellate Counsel is not attempting hereby to improperly supplement the Record; rather, this letter is submitted, as it were, as an "appellate offer of proof," not only as to the propriety of the estimate, but also as to trial counsel's dereliction in failing to adduce comparable evidence below.

APPENDIX B

Defendant's Exhibit D-1

SUBJECT FRIED stated that he had indeed applied for labor certification for several Indians as electrical instrument technicians. He stated that he had met the two through a friend of his, an attorney, named MEHENDRA MEHTA, who had referred the two Indian men to him for employment. He stated that both individuals had come in person to his store and that he had interviewed them for their qualifications and had given them tests to determine whether or not they were qualified electrical instrument repairmen. SUBJECT FRIED was questioned at length concerning the type of work that the Indians would be doing at his establishment and he claimed that the job description, as attached to the Form MA-750B, was correct and that the two Indians for which he had submitted applications for employment certification were fully qualified as to the job description. SUBJECT FRIED was shown photographs of six male Indians, one of which was that of SUBJECT JAYENDRA P. VORA, another was that of SUBJECT ARUNKUMAR M. DAVE, and another was that of SUBJECT MEHENDRA MEHTA. SUBJECT MEHTA's photograph was the only one that he could identify.

APPENDIX B-1

Defendant's Exhibit D-2

SUBJECT FRIED was again interviewed on March 11, 1974 at 1012 Argyle Street, Chicago, Illinois. On this occasion he was able to identify photographs of SUBJECT ARUNKUMAR DAVE and SUBJECT JAYENDRA VORA from a group of other photographs. He showed the writer what appeared to be copies of the Form MA 7-50B, which he had signed, and photographs of SUBJECT ARUNKUMAR DAVE and SUBJECT JAYENDRA VORA, which he said has been provided for him by SUBJECT MEHTA. He still maintained that SUBJECT ARUNKUMAR DAVE and SUBJECT JAYENDRA VORA had come in person to his shop and had been tested as electrical instrument repairmen prior to his signing the form. He admitted that the figure of $75,000 annual sales or income was extremely high for his company and admitted that with his current income he could not afford to pay two electrical instrument repairmen $4.25 an hour for full-time employment. He admitted that the forms had only been partially filled out at the time he signed them and returned them to SUBJECT MEHTA. He executed a short statement at that time, copy of which is attached as Exhibit "D", in which he withdrew his offer of employment to SUBJECT ARUNKUMAR DAVE and SUBJECT JAYENDRA VORA.

APPENDIX C

Tuttle & Kellenberger

[illegible] AVENUE
[illegible]

February 17, 1975

District Director
U. S. Immigration Naturalization Service
219 S. Dearborn Street
Chicago, Illinois 60604

Re: [illegible]

Beneficiary: Patel Jagdishbhai N. A-191-713-275

We have obtained a labor certification from the U. S. Department of Labor for Mr. Patel Jagdishbhai N. for the job of Supervisor (second shift). Mr. Patel Jagdishbhai N. is presently working with us as a Supervisor and we will absorb him into a permanent position as such and will pay him accordingly.

Thanking you,

TUTTLE & KELLENBERGER

John Zolaniak
Chicago Operations Manager

DEFENDANT'S EXHIBIT 61

BEST COPY AVAILABLE

APPENDIX D

Form Approved
Budget Bureau No. 44 R1301

U.S. DEPARTMENT OF LABOR
MANPOWER ADMINISTRATION
MA 7-50B
REPLACES FORM ES-9788

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

JOB OFFER FOR ALIEN EMPLOYMENT

READ THIS NOTICE BEFORE COMPLETING FORM

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Any alien, prospective employer or any person acting on behalf of such alien or employer, who knowingly makes any misrepresentation concerning the alien, or his prospective employment including such matters as wages, hours, or the occupation in which an alien will be employed, or any person who falsely represents, in the execution of this form that he is offering the alien employment as the prospective employer of such alien, will be prosecuted to the fullest extent of the law.

IMPORTANT: READ ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM

Print legibly in ink or use a typewriter. If you need more space to answer fully any questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. Sign and date each sheet.

IN SUPPORT OF THE APPLICATION FOR ADMISSION OF

1. NAME OF ALIEN *If for temporary employment of more than one alien in same occupation, attach list of names and present addresses.* — *Family name in capital letters* | *First name* | *Middle name* | *Maiden name*

2. PRESENT ADDRESS OF ALIEN — *Number and street* | *City and town* | *State & ZIP Code or Province* | *Country*

3. TYPE OF VISA (If in U.S.)

NOTE: Do not employ a nonimmigrant alien who cannot show authorization to work stamped or endorsed on his form I-94, Arrival and Departure Record. Contact Immigration and Naturalization Service if in doubt. An alien who works without authorization is subject to deportation and his employer is subject to denial of certification.

THE FOLLOWING INFORMATION IS SUBMITTED AS EVIDENCE OF AN OFFER OF EMPLOYMENT

4. NAME OF EMPLOYER *(Full name of organization)*

5. TELEPHONE *(Area code and number)*

6. ADDRESS — *Number and street* | *City or town* | *County* | *State* | *ZIP Code*

7. ADDRESS WHERE ALIEN WILL WORK *(If different from item 6)*

8. SIZE OF ORGANIZATION — ANNUAL SALES OR INCOME $ | TOTAL NO. OF EMPLOYEES

9. BRIEF NONTECHNICAL DESCRIPTION OF THE NATURE OF EMPLOYER'S BUSINESS OR ACTIVITY

10. NO. OF EMPLOYEES WHO PERFORM SAME WORK AS ALIEN

11. NO OF EMPLOYEES AT PLACE WHERE ALIEN WILL WORK

12. IF SEASONAL JOB, ENTER MONTHS THAT JOB STARTS & ENDS — FROM | TO

Complete items 13 and 14 only if job is temporary

13. EXACT DATES YOU EXPECT TO EMPLOY ALIEN(S) — FROM | TO

14. NO. OF OPENINGS TO BE FILLED BY ALIENS UNDER THIS JOB OFFER

15. WOULD YOU HIRE A QUALIFIED U.S. WORKER IF AVAILABLE? ☐ YES ☐ NO

16. DESCRIBE EFFORTS YOU HAVE MADE TO FILL THE JOB

17. DESCRIBE HOW YOU LEARNED THAT ALIEN NAMED ABOVE WAS AVAILABLE

18. ALIEN NAMED ABOVE EMPLOYED BY ME — ☐ CURRENTLY — DATE STARTED; ☐ PREVIOUSLY — DATE LEFT *(If any)*

PREVIOUS CERTIFICATIONS RECEIVED *(Permanent job offers only)*

19. NO. CERTIFICATIONS RECEIVED | DATE OF MOST RECENT | 20. NO. ALIENS HIRED | NO. STILL ON JOB

ENDORSEMENTS

Make no entry in this section—for government agency use only

21. DATE FORMS ARE RECEIVED AS ACCEPTABLE FOR PROCESSING

L.O. | S.O.

R.O. | N.O.

For Local ES Office Use Only
L.O. ADDRESS

22. IND. CODE | 23. OCC. TITLE | 24. OCC. CODE

Items continued on reverse

Apr. 1970

29. NAME OF JOB OFFERED			30. IS THERE EITHER A LABOR DISPUTE EXISTING OR A LABOR CONTRACT BEING NEGOTIATED? ☐ YES ☐ NO
27. IF THE JOB IS UNIONIZED ▶	NUMBER OF LOCAL	NAME	CITY AND STATE

28. TOTAL HOURS PER WEEK		29. RATE OF PAY *(Per hour, week, etc.)*		ADDITIONS TO BASIC RATE OF PAY *(Commission, piece rate, etc.)*
BASIC	OVERTIME	BASIC $ PER	OVERTIME $ PER	

30. DESCRIBE FULLY THE JOB TO BE PERFORMED *(If alien is required to live at work, form MA 7-50C must also be submitted.)*

DUTIES

EQUIPMENT OPERATED	WORKING CONDITIONS

31. STATE IN DETAIL THE *MINIMUM* REQUIREMENTS FOR WORKER TO PERFORM SATISFACTORILY THE JOB DUTIES DESCRIBED ABOVE.

EDUCATION *(Enter number of years)*			SPECIFY COLLEGE DEGREE REQUIRED	MAJOR FIELD OF STUDY
GRADE SCHOOL	HIGH SCHOOL	COLLEGE		
TRAINING ▶	NUMBER OF YEARS OR MONTHS		TYPE OF TRAINING *(Specify vocational preparation, such as apprenticeship, trade school or other training required)*	
EXPERIENCE ▶	NUMBER OF YEARS OR MONTHS IN JOB BEING OFFERED, OR		NUMBER OF YEARS OR MONTHS IN RELATED OCCUPATION	RELATED OCCUPATION *(Specify)*

32. SPECIFY ANY OTHER SPECIAL REQUIREMENTS

33. OCCUPATIONAL TITLE OF PERSON WHO WILL BE ALIEN'S IMMEDIATE SUPERVISOR	34. TYPE AND DEGREE OF SUPERVISION ALIEN WILL RECEIVE	35. NUMBER OF OTHER EMPLOYEES ALIEN WILL SUPERVISE

36. HAVE YOU FULLY INFORMED ALIEN OF JOB DUTIES, RATE OF PAY, AND TERMS OF YOUR JOB OFFER? ☐ YES ☐ NO

37. DECLARATIONS

DECLARATION OF EMPLOYER: Under penalties of perjury, I declare that I have examined this application, supplements thereto, and all accompanying documents, and to the best of my knowledge and belief the information presented thereon is true, correct and complete.

SIGNATURE	DATE SIGNED

NAME *(Type or print)*	TITLE

DECLARATION OF AGENT OF EMPLOYER *(If prepared by, or if assistance in preparation is provided by person other than employer):* I declare that the contents of this application, supplements thereto, and all accompanying documents are based on all information of which I have any knowledge.

SIGNATURE	DATE SIGNED

NAME *(Type or print)*

ADDRESS *(Number and Street, City, State and ZIP Code)*

INSTRUCTIONS FOR COMPLETION OF FORM MA 7-50B

(Replaces Instruction Form ES-576B)

A. GENERAL INFORMATION

1. This form is required whenever an employer in the United States seeks to employ an alien *unless the alien possesses occupational qualifications for which a job offer is not required.* Information about occupations which do not require job offers may be obtained from offices of the State employment service, the Immigration and Naturalization Service, or U.S. Consulates abroad.
2. If an offer of *permanent* employment is made to an alien seeking admission as an *immigrant*, Form MA 7-50A, Statement of Qualifications of Alien, must also be submitted with this Form MA 7-50B. *Temporary* employment offers to *nonimmigrant* aliens require only this Form MA 7-50B. Employers seeking more detailed information regarding requirements and procedures for obtaining Department of Labor certification should contact the office of the State employment service which serves the area of proposed employment.

   Important: If the worker will be required to live at the place of employment, a Form MA 7-50C, Supplemental Statement for Live-at-Work Job Offers, must be filled out and submitted by the employer together with Forms MA 7-50A and B.
3. The requirements for filing a preference petition are under the jurisdiction of the Immigration and Naturalization Service. Petition forms and filing instructions may be obtained from offices of that Service.

   NOTE: Aliens in the United States should contact the Immigration and Naturalization Service to determine whether or not they are eligible for admission without a job offer.

B. INSTRUCTIONS FOR NUMBERED ITEMS requiring explanation are as follows:

Item 1. Enter the name of the alien to whom the job offer is being made, exactly as it appears on Form MA 7-50A, Statement of Qualifications of Alien. If temporary employment of more than one alien is being offered, attach a list of the names and present addresses of the aliens.

Item 2. Enter the present address of the alien, whether within or outside of the United States.

Item 3. If the alien is presently in the U.S., enter the number and type of visa held; e.g., B-2 (Visitor), F-1 (Student), etc. If nonimmigrant status has been changed since entering U.S., indicate current status as shown on Form I-94.

Item 4. Enter full, legal name of business, firm, or organization, or if an individual, enter name ordinarily used for legal purposes on documents.

Item 7. If the alien will work at a site or location different from that shown in item 6, enter the number and street, city, State, and zip code where the alien will work.

Item 8. No entry for annual sales o. income is required in this item if the employer is an educational institution, hospital, church, non-profit organization, private household, or other non-business establishment. Business firms, companies, and organizations, including farms, ranches, and other agricultural enterprises, should enter the total number of employees in the entire firm or organization (total work force of all locations combined).

Item 9. If a private home, enter "Household." Farms, ranches, etc. must include the number of acres and number of each type of livestock raised in their description of activities.

Item 10. Enter the number of employees who presently work in the same job or occupational category in which the alien will work at the employing address.

Item 11. Give the number of employees (total work force) who work at the place or location where the alien will be employed. Enter "Same as No. 8" if the employer has only one location.

Item 12. If the alien will be required to work on a seasonal basis (only part of every year), enter the months the job starts and ends; e.g., From: March To: October. If not seasonal job, leave item blank.

Items 13 and 14 are to be completed *only* if the job offer is temporary.

Item 13. Enter the exact month, day, and year the temporary job starts and ends; e.g., from March 15, 1970 to June 30, 1970.

Item 14. Enter the number of openings to be filled by *aliens* t. whom this job offer for temporary employment is made.

Item 16. Efforts to be identified include recruitment and training programs, advertising, etc. and the results of such efforts.

Item 18. Complete only if you have employed alien.

Items 19 and 20 are to be completed *only* if the job offer is permanent.

Item 29. Enter common name or payroll title of job being offered to the alien.

Item 29. Examples of required entries are: $2.50 per hour or $450 per month. Commissons, price rates, and other additions to the basic pay rate must be expressed in terms such as 40 percent of gross sales, $.03 per unit, etc. If no basic, minimum, or guaranteed dollar amount is involved (as in the case of straight commission only) the employer must (1) give details of the method of computing the compensation, and (2) provide an estimate of the average dollar amount per month or year to be paid to the alien or which is currently being paid to other employees in similar jobs. Use space in item 30 or a separate sheet to provide this information. Be sure to include the word "estimated" with the dollar amount.

Item 30. Describe all job duties in detail as you expect them to be performed by *any* worker filling the job opening. Do *not* include restrictive specifications unrelated to actually doing the job which would prevent consideration of otherwise qualified workers. In addition, enter the equipment, machines, etc. to be operated and the working conditions of the job, such as ventilation, heating, etc.

Item 31. Specify, as indicated, the *minimum* education, training, and experience which are required for a worker to perform satisfactorily on the job. Requirements must not be tailored to fit the alien only.

Item 32. Examples of other special requirements are ability to speak, read, and write foreign languages only if definitely job-related, requirements for licensing, etc.

Item 37. All copies of this form must bear the original signatures of all parties involved, as applicable, and the dates signed. When no agent of the employer is involved, the employer must sign and date all copies. If the employer is a company, firm or organization, the official title of the person who signs and dates the form is also required. If an agent of the employer signs, dates, and otherwise completes the "Declaration of Agent of Employer" portion, no signature of the employer is required. An agent acting on behalf of the employer must sign, date and complete the designated spaces in this item, regardless of whether or not the employer signs the form.

C. WHERE TO FILE. Required forms involving job offers for either temporary or permanent employment of aliens must be filed at the office of the State employment service which serves the area where the job is located. The original and one copy of each form are the *minimum* number required. (Do *not* submit forms directly to the Department of Labor.)

D. NOTIFICATION OF APPROVAL OR DISAPPROVAL. Employers will be notified by the Department of Labor if an application for alien employment certification is approved or disapproved, and instructions for further action will be issued. Employers may then inform the alien regarding the certification.

E. CERTIFICATION VALIDITY. If approved, certification pursuant to Department of Labor regulations is valid for a minimum period of one year and for an indefinite period thereafter, unless the occupation is specified by the Department of Labor as one requiring revalidation. Approval of job offer cases is recorded on MA Form 7-50B only. If disapproved, no record is made on the forms.

APPENDIX E

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
219 South Dearborn Street
Chicago, Illinois 60604

Refer To This File No.
A20 911 800 TC-345

Date: 13 JUN 1977

Yogendra B. PATEL
4949 North Whipple #2W
Chicago, Illinois 60625

DECISION ON APPLICATION FOR STATUS AS PERMANENT RESIDENT

Upon consideration, it is ordered that your application for status as a permanent resident be denied for the following reasons:

(SEE ATTACHMENT)

You are granted to JUL 13 1977 to effect your departure from the United States voluntarily, without the institution of proceedings to enforce your departure. You must notify this office before that date on the enclosed card (Form I-438) of the arrangements you have made to depart from the United States. *At the time of your departure from the United States, do not fail to surrender Form I-94, Arrival-Departure Record, in accordance with the instructions on that form.*

If you fail to depart from the United States by the date specified, proceedings will be instituted to enforce your departure. You may renew your application for status as a permanent resident during such proceedings.

Sincerely yours,
David V. Vandersall
David V. Vandersall
District Director

Enclosure(s)
☒ I-438
☐ I-94
☐ Passport
☐

Form I-291
(Rev. 11-30-72)N

GPO 894-865

ATTACHMENT TO I-291 A20 911 800

On February 24, 1976, you applied for adjustment of status to that of a lawful permanent resident of the United States under the provisions of Section 245 of the Immigration and Nationality Act, as amended, as a person to whom a nonpreference visa number is immediately available. You have based this application upon your qualifications to fill the position of "Electrical Design Engineer", a position which the Secretary of Labor has certified will not adversely affect the wages and working conditions of United States citizens and lawful permanent residents engaged in simular employment.

Your record indicates that you were employed full time by the William Bowman Rubber Company, Cicero Berwyn, Illinois from May of 1973 to September 1973. From November of 1973 to July 1975 you were employed on a full time basis by the Racine Paper Box Company, Chicago, Illinois.

You last entered the United States on September 27, 1974 as a nonimmigrant student. A nonimmigrant student is statutorily prohibited from accepting employment without securing permission from the Immigration Service. To accept employment without permission violates the student status and may be cause for deportation proceedings to be initiated. Your record reflects that you resumed your employment with the Racine Paper Box Company after your last entry into the United States. It must be assumed, therefore, that not only were you returning to the United States to continue your studies but you were also returning to continue your illegal employment. Since you were not in possession of a valid labor certification as required by Section 212(a)(14) of the Act, you were not admissible to the United States at the time of your last entry.

You became employed on a full time basis with Sommer Electric Company Inc., Elk Grove Village, Illinois in August of 1975 and are still so employed. On January 28, 1975 and on August 28, 1975 you signed and submitted forms I-538 (Application of Nonimmigrant Student for Extension of Stay, School Transfer or Permission to Accept or Continue Employment) to this Service. On both applications you falsely indicated that you had not been employed in the United States. In the January 28, 1975 application you requested employment and were specifically denied permission to accept employment. On the basis of your false statements you have twice received extensions of stay to which you were not entitled.

As the foregoing evidence clearly points out, your record before this Service is that of a person who has failed to demonstrate even perfunctory good faith toward the laws of this country and the regulations of this Service. You have violated the terms of your admission to the United States by accepting illegal employment. You have deliberately concealed such employment from this Service and thereby obtained benefits under the Immigration laws to which you were not entitled.

Section 245 of the Act provides in pertinent part:

> The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence. (emphasis added).....

You have failed to establish that the facts of your case merit the favorable exercise of administrative discretion. Your application for adjustment of status to that of a lawful permanent resident of the United States is, therefore, denied.

APPENDIX F

List of Documents Probably in Existence

As to Vora Jayendra.

Application for Visa for applying F.1 visa together with accompanying documents.

Application of Vora for bringing his wife as F.2 together with any documents submitted by him.

Application Form I-538 for change of school from Los Angeles to Chicago, together with accompanying documents.

Application for extension of time to stay in this country for each year together with accompanying documents.

Application for adjustment of status filed by Vora other than dated October 9, 1973, sent for consideration after obtaining Labor Certification under Sec. 212(a)(14) in relation to his job with Rehnsberg Jacobson Mfg. Co.

Biographic Information form G.325.

Any other application made by Mr. Vora in relation to his status into U.S. to the Department of Justice, made by him or through his lawyer up to the trial date, more particularly of requesting permission to go to India.

As to Dave Arunkumar.

Application for Visa for applying F.1 visa together with accompanying documents.

Application of Dave A. for bringing his wife as F.2 together with any documents submitted by him.

Application Form I-538 for extension of time to stay in this country for each year together with accompanying documents.

Application for adjustment of status filed by Dave A. other than dated January 22, 1974, sent for consideration after obtaining Labor Certification under Sec. 212(a)(14) in relation to his job with Avildon Tools.

Biographic Information form G.325.

Any other application made by Mr. Dave A. in relation to his status into U.S. to the Department of Justice, made by him through his lawyer up to the trial date.

As to Dave Dinesh.

Application for Visa for applying F.1 visa together with accompanying documents.

Application of Dave Dinesh for bringing his wife as F.2 together with any documents submitted by him.

Application Form I-538 for change of school if any together with accompanying documents.

Application for extension of time to stay in this country for each year together with accompanying documents.

Application for adjustment of status filed by Dave Dinesh, sent for consideration after obtaining Labor Certification under Sec. 212(a)(14) in relation to his job (at that time).

Biographic information form G.325.

Any other application made by Dave Dinesh in relation to his status into U.S. to the Department of Justice, made by him or through his lawyer.